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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/636,057	08/07/2003	Guy Boudreau	2224-00200	1029

23505 7590 05/03/2005

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EXAMINER

ADDIE, RAYMOND W

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/636,057	Applicant(s) BOUDREAU, GUY	
	Examiner Raymond W. Addie	Art Unit 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6- are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "freely engaged" in claim 6 is a relative term which renders the claim indefinite. The term "freely engaged" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. The structural relationship required by the term "freely engaged" is indefinite and one of ordinary skill in the art, would not be able to make the invention, as claimed.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6- rejected under 35 U.S.C. 103(a) as being unpatentable over Ann'es #

6,109,824 in view of Soderstrom # 4,255,909.

Ann'es discloses a self-leveling system having an intended use of preventing damage to a roadway surface, surrounding a manhole or the like, the system comprising:

A frame (3) having an upper portion (35, 36) and a lower portion (30). Said frame being supported by the ground adjacent the frame.

A plurality of tubular sections (9, 11).

Wherein, said upper portion (35, 36) has a horizontal wall (indicated by element # 3, in Fig. 1), which is capable of transmitting, to the ground adjacent said frame, forces that are directly applied to said frame (3). Further wherein an upper extremity of the tubular section (9) is freely engaged inside the lower portion of the frame, such that the frame (3) is capable of moving vertically, along the longitudinal axis of said tubular sections (9, 11), to accommodate known seasonal forces such as frost and heave, thereby transmitting ground forces, that would otherwise damage the soil adjacent the manhole assembly. Still further wherein, said lower portion (30) of said frame (3), has at least one inclined wall, (37, 38) which is capable of permitting the frame of moving angularly, in any direction, relative to the axis of the tubular section (11), to permit said frame to be positioned flush to an inclined roadway surface, such that said tubular section (9), is capable of remaining in a static position, during ground induced movement of said frame assembly (3). What Ann'es does not disclose is frame/tube interface, wherein the frame is capable of moving along an exterior surface of said tubular section, during anticipated ground force loading of said frame.

However, Soderstrom teaches it is known to provide manhole assemblies (1) with multiple sub-frame assemblies (10, 12) having horizontally disposed flanges (see Fig. 4), for transmitting known traffic and ground forces, through distinct layers of the sub-base, in order to prevent damage to the roadway surrounding the manhole. See Soderstrom Cols. 2-3.

In regards to claims 7, 8 Ann'es discloses the upper (35, 36) and lower frame portions (30), have downwardly inclined surfaces (35, 37, 38), see Fig. 2, and upper and lower apertures for receiving and directing rain/ground water into a storm drain assembly (6), such that the center of the aperture of the upper portion (35, 36) is eccentric relative to the center of the aperture of the lower portion (30), thereby permitting the use of manhole covers or storm drain gates (1).

Response to Amendment

3. Applicant Amendment canceling claims 9-12, renders moot, the rejections of those claims in the Last Office Action.

Response to Arguments

4. Applicant's arguments filed 4/11/2005 have been fully considered but they are not persuasive.

Applicant argues against the rejection of claims 6-8 as being obvious to the teachings of

Ann'es in view of Soderstrom, by stating "the tubular section remains at its same position during vertical or angular movement of the frame...This...is not found in the system of Ann'es...the frame (3) and the tubular conduit (9) of Ann'es are a one-piece structure, frame alone cannot move to adjust itself...it is not possible to include(sic) the frame relative to the axis of the cylindrical base 6".

However, the Examiner does not concur.

In response to Applicant's argument that " the frame (3) and the tubular conduit (9) of Ann'es are a one-piece structure, frame alone cannot move to adjust itself" it must be considered in light of the full disclosure of the Anne's patent.

Specifically Anne's discloses the use of multiple tubular section (9 and 11), that permit the frame to "adjust itself" under the influence of known vehicle and ground loading of the frame assembly (3), relative to the storm drain assembly (9). Hence, the presence of additional structure not required by Applicant's invention, it must be noted that Ann'es discloses the invention as now claimed. The fact that it discloses additional structure to perform the same reactive functions, is irrelevant; unless the criticality of the reduced structural feature claimed, can be shown to cause a patentably distinction from that which is taught by the prior art.

Therefore, the arguments are not persuasive the rejection is maintained.

Art Unit: 3671

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond Addie whose telephone number is (571) 272-6986. The examiner can normally be reached on Monday-Saturday from 7:00 am to 2:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (571) 272-6998.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Raymond Addie
Patent Examiner
Group 3600**

**RWA
4/30/2005**